

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Price Broadcasting, Inc.)	
)	CSR-6193-M
v.)	
)	
Dugway Cable TV Corp.)	
)	
Request for Mandatory Carriage of)	
Television Station KUTF(TV),)	
Price, Utah)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: October 17, 2003

Released: October 23, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Price Broadcasting, Inc. ("Price Broadcasting"), licensee of television broadcast station KUTF(TV) (Channel 3), Price, Utah ("KUTF" or the "Station") filed the above-captioned must carry complaint against Dugway Cable TV Corp. ("Dugway"), for failing to carry KUTF on its cable system serving Dugway, Utah and the surrounding areas (the "cable communities").¹ No opposition to the complaint was received.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.² A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusive of

¹ Complaint at 1. According to Price Broadcasting, KUTF is operating pursuant to automatic program test authority. *Id.*

² 8 FCC Rcd 2965, 2976-2977 (1993).

³ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets base on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(c). Section 76.55(e) requires that a commercial broadcast television station's market be defined by
(continued...)

others, based on measured viewing patterns.

3. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.⁴ One method of doing so is for a cable operator to establish that a subject television signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁵ Should a station fail to provide the required over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a television station may provide a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁶

III. DISCUSSION

4. In support of its complaint, KUTF states that it is a full-power television station licensed to Price, Utah, which is in the Salt Lake DMA.⁷ It states further that Dugway operates a cable television system that is also in the Salt Lake DMA.⁸ KUTF asserts that on March 17, 2003, it formally requested Dugway to commence carriage of its signal on Channel 3 of the Dugway, Utah cable system.⁹ KUTF asserts that Dugway did not respond in writing to its March 17, 2003 request for mandatory carriage in the cable communities within 30 days of receipt of such request as required by Section 76.61(a)(5)(ii) of the Commission's rules.¹⁰ KUTF asserts that because Dugway did not respond to the Station's must carry request, KUTF does not know if it can deliver a good quality signal to Dugway's principal headend, but that it is committed to deliver, at its own expense, a good quality signal to Dugway's principal headend.¹¹ KUTF requests that the Commission order Dugway to commence carriage of its signal on the cable system in question.¹²

5. Section 76.55(e) of the Commission's rules provides that commercial television broadcast stations, such as KUTF, are entitled to carriage on cable systems located in the same DMA.¹³ As noted above, cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to carriage.¹⁴ We find that Dugway has failed to meet its burden. It did not file an opposition to KUTF's must carry complaint nor did it respond within 30 days to KUTF's letter requesting carriage as required by the Commission's rules. KUTF is committed to

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Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e).

⁴ See *Must Carry Order*, 8 FCC Rcd at 2990.

⁵ 47 C.F.R. § 76.55(c)(3).

⁶ *Must Carry Order*, 8 FCC Rcd at 2991.

⁷ Complaint at 1.

⁸ *Id.* at 2.

⁹ *Id.* and Exhibit 1.

¹⁰ *Id.*

¹¹ *Id.* at 4; see 47 C.F.R. § 76.55(c)(2)-(3).

¹² Complaint at 5.

¹³ 47 C.F.R. § 76.55(e).

¹⁴ See *Must Carry Order*, 8 FCC Rcd at 2990.

acquire and install, at its own expense, any and all necessary improvements and equipment needed to provide a good quality signal to Dugway's principal headend. KUTF by committing to provide any necessary equipment has satisfied its obligation to bear the costs associated with delivering a good quality signal.¹⁵ Thus, we find that KUTF is entitled to mandatory carriage on the Dugway cable system at issue.

6. With respect to KUTF's channel positioning request, we find that it has properly requested carriage on channel 3 of Dugway's system, the same channel number on which it is broadcast over-the-air. Pursuant to the Commission's rules, cable operators must comply with channel positioning requirements absent a compelling technical reason. Based on the foregoing, we grant KUTF's complaint.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the must carry complaint filed by Price Broadcasting, Inc., licensee of television broadcast station KUTF(TV), Price, Utah, against Dugway Cable TV Corp. **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that Dugway **SHALL COMMENCE CARRIAGE** of the KUTF(TV) signal on Channel 3 of its cable system serving Dugway, Utah and surrounding areas, within sixty (60) days after KUTF delivers a good quality signal to Dugway's principal headend.

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

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¹⁵ See *Must Carry Order*, 8 FCC Rcd at 2991; see also 47 U.S.C. § 534(h)(1)(B)(iii).

¹⁶ 47 C.F.R. § 0.283.